

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:16-cv-00328-MR-DLH**

**LISA HANSON, Individually and as, )  
Executrix of the Estate of Delmont D. )  
Hanson, TONY HANSON, )**

**Plaintiffs,** )

**VS.**

**3M COMPANY, et al.,** )

**Defendants.** )

## ORDER

**THIS MATTER** is before the Court on the Motion to Dismiss filed by the Defendant Mannington Mills, Inc. (hereinafter “Defendant Mills”) [Doc. 65]; the Magistrate Judge’s Memorandum and Recommendation regarding the disposition of that motion [Doc. 78]; and the Plaintiff’s Objections to the Memorandum and Recommendation [Doc. 79].

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the pending motion in the above-captioned action. On April 24, 2017, the Magistrate Judge filed a Memorandum and Recommendation [Doc. 78], in which the Magistrate

Judge recommended granting Defendant Mills' Motion to Dismiss. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The Plaintiff timely filed her Objections to the Memorandum and Recommendation on May 8, 2017. [Doc. 79]. Defendant Mills filed a Reply to the Plaintiff's Objections on May 22, 2017. [Doc. 79].

After careful consideration of the Plaintiff's Objections, the Court finds that the Magistrate Judge's proposed conclusions of law are correct and consistent with current case law. Accordingly, the Court hereby overrules the Plaintiff's Objections and accepts the Magistrate Judge's recommendation that the Defendant's Motion to Dismiss be granted.

In her Objections, the Plaintiff asserts the Magistrate Judge erred by failing to provide her an opportunity to amend her Amended Complaint. In her Response to Defendant Mills' Motion to Dismiss, the Plaintiff requested an opportunity to amend her Amended Complaint in the event the Magistrate Judge found her allegations insufficient. [Doc. 74 at 8-9]. In the Memorandum and Recommendation, the Magistrate Judge correctly noted that Local Rule 7.1(C)(2) provides that a motion cannot be contained in a responsive brief.

[Doc. 78 at 8 n. 1]. Accordingly, the Magistrate Judge declined to address the Plaintiff's request to amend. [Id.]

Despite Plaintiff's acknowledge of her failure to adhere to the requirements of Local Rule 7.1(C)(2), Plaintiff renews her request to amend, not by the filing of a separate motion, but as part of her Objections to the Memorandum and Recommendation. [Doc. 79 at 2, 7–8]. Plaintiff again requests she be granted leave to amend should this Court agree with the Magistrate Judge's recommendation. [Id.].

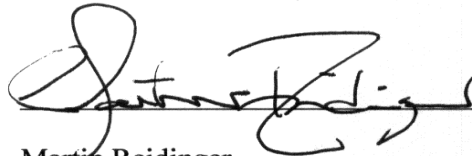
Plaintiff's request is not well-taken. The request to amend is not only in contravention of the Court's Local Rules but also an obvious attempt to circumvent the recommendation of the Magistrate Judge regarding the disposition of Defendant Mills' Motion to Dismiss. See Googerdry v. N.C. Agric. and Technical State Univ., 386 F.Supp.2d 618, 623 (M.D.N.C.2005). The Plaintiff cannot now attempt to circumvent the Magistrate Judge's recommendation by seeking to amend her Amended Complaint. See Bailey v. Polk County, No. 1:10cv264, 2011 WL 4565449, at \*4 (W.D.N.C. Sept. 29, 2011). Moreover, allowing such amendment would impermissibly place the Court in the position of rendering an advisory opinion. See Glazer v. Chase Home Finance LLC, No. 1:09CV1262, 2010 WL 1391318, at \*1 (N.D.Ohio

Mar. 31, 2010). For these reasons, the Plaintiff's request to amend the Amended Complaint is denied.

**IT IS, THEREFORE, ORDERED** that the Plaintiffs' Objections [Doc. 79] are **OVERRULED**; the Memorandum and Recommendation [Doc. 78] is **ACCEPTED**; the Defendants' Motion to Dismiss [Doc. 65] is **GRANTED**; and the Plaintiff's claims against the Defendant Mannington Mills, Inc., are hereby **DISMISSED**.

**IT IS SO ORDERED.**

Signed: June 27, 2017

  
Martin Reidinger  
United States District Judge

